

1 **BARBARA LAWALL**  
2 **PIMA COUNTY ATTORNEY**  
3 **CIVIL DIVISION**  
4 Daniel Jurkowitz, SBN 018428  
5 Deputy County Attorney  
6 32 North Stone Avenue, Suite 2100  
7 Tucson, Arizona 85701  
8 Telephone: 520-724-5700  
9 Daniel.Jurkowitz@pcao.pima.gov  
10 *Attorney for Pima County Recorder F. Ann Rodriguez*

11 **IN THE UNITED STATES DISTRICT COURT**  
12 **FOR THE DISTRICT OF ARIZONA**

13 League of United Latin American Citizens  
14 Arizona; Arizona Students' Association,

15 Plaintiffs,

16 v.

17 Michele Reagan, in her official capacity  
18 as Secretary of State of Arizona; Adrian  
19 Fontes, in his official capacity as Maricopa  
20 County Recorder,

21 Defendants,

No. 2:17-cv-04102-DGC

**PIMA COUNTY RECORDER'S  
RESPONSE TO MOTION TO  
ENFORCE**

Assigned to:  
Honorable David G. Campbell

22 Without waiving any jurisdictional objections, the Pima County Recorder, F.  
23 Ann Rodriguez, makes a special appearance to respond to the Motion to Enforce and  
24 asks that the motion be denied as to the Pima County Recorder for the reasons set  
25 forth below.

26 ///

///

///

1           **I.       Mr. Cisneros and the Pima County Recorder are both not parties to**  
2                       **the case or the consent decree and the Court lacks personal and**  
3                       **subject matter jurisdiction over them.**

4           Neither Mr. Cisneros nor the Pima County Recorder were parties to this case.  
5           Accordingly, the Court did not have personal jurisdiction over the Pima County  
6           Recorder when the consent decree was ordered and the order does not directly bind  
7           the Pima County Recorder. F. R. Civ. P. 65(d)(2). The Pima County Recorder was  
8           not in active concert or participation with any of the parties and was not even  
9           consulted about resolution of the consent decree. Even if she was, “[a] district court  
10          cannot exercise personal jurisdiction over a nonparty...on the basis that the nonparty  
11          is acting ‘in active concert or participation,’ within the meaning of Fed.R.Civ.P. 65(d)  
12          with a party who is subject to an injunction, unless personal jurisdiction is established  
13          over the nonparty.” *Gucci Am., Inc. v. Weixing Li*, 768 F.3d 122, 137 (2d Cir. 2014).  
14          That has not occurred. *See also Swetland v. Curry*, 188 F.2d 841, 843, (6th Cir. 1951)  
15          (not having been made a party to the injunction, county not bound in subsequent  
16          contempt proceedings); *Kean v. Hurley*, 179 F.2d 888 (8th Cir. 1950) (A judgment or  
17          decree for injunction is usually in personam and persons who are not parties to the  
18          injunction or in privity with them are not bound by the decree). The appropriate party  
19          to seek any relief from for any alleged violations of the consent decree would be the  
20          Arizona Secretary of State.

21          Mr. Cisneros relies upon F. R. Civ. P. 71 as the basis for hailing the Pima  
22          County Recorder into court to enforce the consent decree. A consent decree however  
23          “...represents a compromise between parties who have waived their right to litigation  
24          and, in the interest of avoiding the risk and expense of suit, have giv[en] up something  
25          they might have won had they proceeded with the litigation.” *United States v. Armour*  
26          & *Co.*, 402 U.S. 673, 681 (1971). Accordingly, “...a consent decree is not enforceable

1 directly or in collateral proceedings by those who are not parties to it even though  
2 they were intended to be benefited by it.” *Blue Chip Stamps v. Manor Drug Stores*,  
3 421 U.S. 723, 750 (1975). Further, Mr. Cisneros, who is not a party, lacks standing to  
4 seek affirmative relief under the consent decree. *See e.g. Salter v. Douglas*  
5 *MacArthur State Technical College*, 929 F.Supp. 1470, 1481 (M.D. Alabama 1996).  
6

7 **II. The motion fails to state a claim upon which relief can be granted.**

8 In addition to the Pima County Recorder not being a party to the case or the  
9 consent decree, there is no case or controversy as there has been no violation of the  
10 consent decree. The consent decree directs a somewhat contradictory process where  
11 an applicant who holds an F-Type License, indicating non-citizenship, should be  
12 moved to a “not eligible” status and then county recorder should notify the applicant  
13 within 10 business days that, if this incorrect, the applicant can provide documentary  
14 proof of citizenship to the county recorder. Consent Decree (Dkt. 37) at 9. The  
15 delineated procedures, however, specifically refer to a person in “Fed Only Voter”  
16 status and do not refer to a person who has been placed in a “not eligible” status.  
17 Consent Decree (Dkt. 37) at 10-12. Nevertheless, it appears that an appropriate  
18 process occurred for Mr. Cisneros. The Pima County Recorder was notified by the  
19 Arizona Secretary of State that Mr. Cisneros had an F-Type License. Notice was sent  
20 to Mr. Cisneros and he presented documentary proof of citizenship and was registered  
21 as a Full Ballot Voter upon presentation of such. There is no language in the consent  
22 decree directing that this be other than a new registration for someone who was  
23 previously in “not eligible” status. However, the Pima County Recorder, in her  
24 discretion, allowed the registration to relate back to the date upon which Mr. Cisneros  
25 first applied as potentially contemplated by the process in paragraph 3 of the consent  
26 decree and verified his early ballot for counting. See attached Exhibit A, Affidavit of

1 Chief Deputy Recorder/Registrar of Voters Christopher Roads. Accordingly, even if  
2 the Court were to consider the merits of the motion, there is no relief to be granted.

3  
4 **III. The motion is unnecessary and improper and the Court should**  
5 **issue sanctions.**

6 As previously related, this motion against the Pima County Recorder is  
7 unnecessary and improper. Further, the Pima County Recorder provides online real-  
8 time updates to all early ballot processing activities and that information is available  
9 anytime at <https://www.recorder.pima.gov/VoterStats/BallotInfo>. Mr. Cisneros  
10 apparently declined to avail himself of this opportunity and chose to instead file this  
11 unnecessary and improper motion incurring expense for Pima County and wasting the  
12 Court's time. The Pima County Recorder respectfully requests that the Court issue an  
13 appropriate sanction for this unnecessary and improper litigation.

14  
15 RESPECTFULLY SUBMITTED November 13, 2018.

16 BARBARA LAWALL,  
17 PIMA COUNTY ATTORNEY

18 By: /s/ Daniel Jurkowitz  
19 Daniel Jurkowitz,  
20 Deputy County Attorney  
21  
22  
23  
24  
25  
26

**CERTIFICATE OF SERVICE**

I hereby certify that on November 13, 2018, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Danielle Lang  
Paul M. Smith  
J. Gerald Hebert  
Adav Noti  
Mark Gaber  
CAMPAIGN LEGAL CENTER  
1411 K Street NW Suite 1400  
Washington, DC 20005  
[dlang@campaignlegalcenter.org](mailto:dlang@campaignlegalcenter.org)  
*Attorneys for Plaintiffs*

Joseph La Rue  
Arizona Attorney General's Office  
2005 North Central Avenue  
Phoenix, AZ 85004  
[joseph.larue@azag.gov](mailto:joseph.larue@azag.gov)  
*Attorney for Defendant Michele Reagan Secretary of State of Arizona*

Talia Offord  
Deputy County Attorney  
Maricopa County Attorney's Office  
301 West Jefferson Street  
Phoenix, AZ 85003  
[offordt@mcao.maricopa.gov](mailto:offordt@mcao.maricopa.gov)  
*Attorneys for Defendant Adrian Fontes, Maricopa County Recorder*

By: /s/ Katherine T. Syverson